

Sumter City-County Board of Zoning Appeals

June 13, 2012
June 20, 2012 – Special Meeting

BOA-12-28, 4330 Broad St. (County)

The applicant is requesting Special Exception approval for an Electronic Gaming Establishment as required per Article 3, Section 3.i.4.j Electronic Gaming Establishments (SIC 7999), Article 3, Exhibit 5 and Article 5, Section 5.b.3.k. Special Design Review Criteria. The property is located at 4330 Broad St. and is represented by Tax Map # 155-02-01-011. These businesses are often called Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

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BOA-12-28, 4330 Broad St. (County)

I. THE REQUEST

Applicant: Tony Ashy

Status of the Applicant: Business Operator/Property Owner

Request: Special Exception approval for an Electronic Gaming Establishment (SIC 7999). These businesses are often called Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.

Location: 4330 Broad St.

Present Use/Zoning: Unoccupied structure/General Commercial (GC)

Tax Map Reference: 155-02-01-011

II. BACKGROUND

The applicant is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) with 20 sweepstakes terminals at 4330 Broad St. in Sumter County, shown in the photograph to the right.

Electronic gaming operations are defined as, “*Any business enterprise, whether as a principal use or an accessory use, where persons use electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, actual or simulated, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined results. This term includes, but is not limited to internet cafes,*



internet sweepstakes, cybercafés, sweepstakes promotions, or sweepstakes parlors. This does not include any lottery approved by the State of South Carolina.”

Currently, the subject property is the site of a vacant 2163 sq. ft. commercial building that was last used as a convenience store. After consulting the Sumter City-County Business License Department, it appears that there has never been a business license for the address of 4330 Broad St. However, plats submitted by the applicant from 1994 indicate that the facility was used as a food store with limited fueling services. Based upon this information, it is assumed that there has not been an active business at this site for at least three years from the date of the publication of this report. The site is non-conforming with respect to parking lot design, landscaping, and buffering. There is paved parking on site, however; the existing parking lot does not have concrete curb and gutter, and some of the delineated spaces extend into the SC DOT right of way.

According to the Official Zoning Map for Sumter County, the property is zoned as General Commercial (GC). The purpose of the GC zoning district is to accommodate the broadest possible range of commercial uses, determined principally by market conditions, while protecting adjacent property owners from potentially objectionable uses.

Under the GC district, Electronic Gaming Establishments (SIC 7999) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for electronic gaming establishments are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3, Section 3.i.4.j and in accordance with Article 5, Section 5.b.3.k of the Sumter County – Zoning & Development Standards Ordinance.

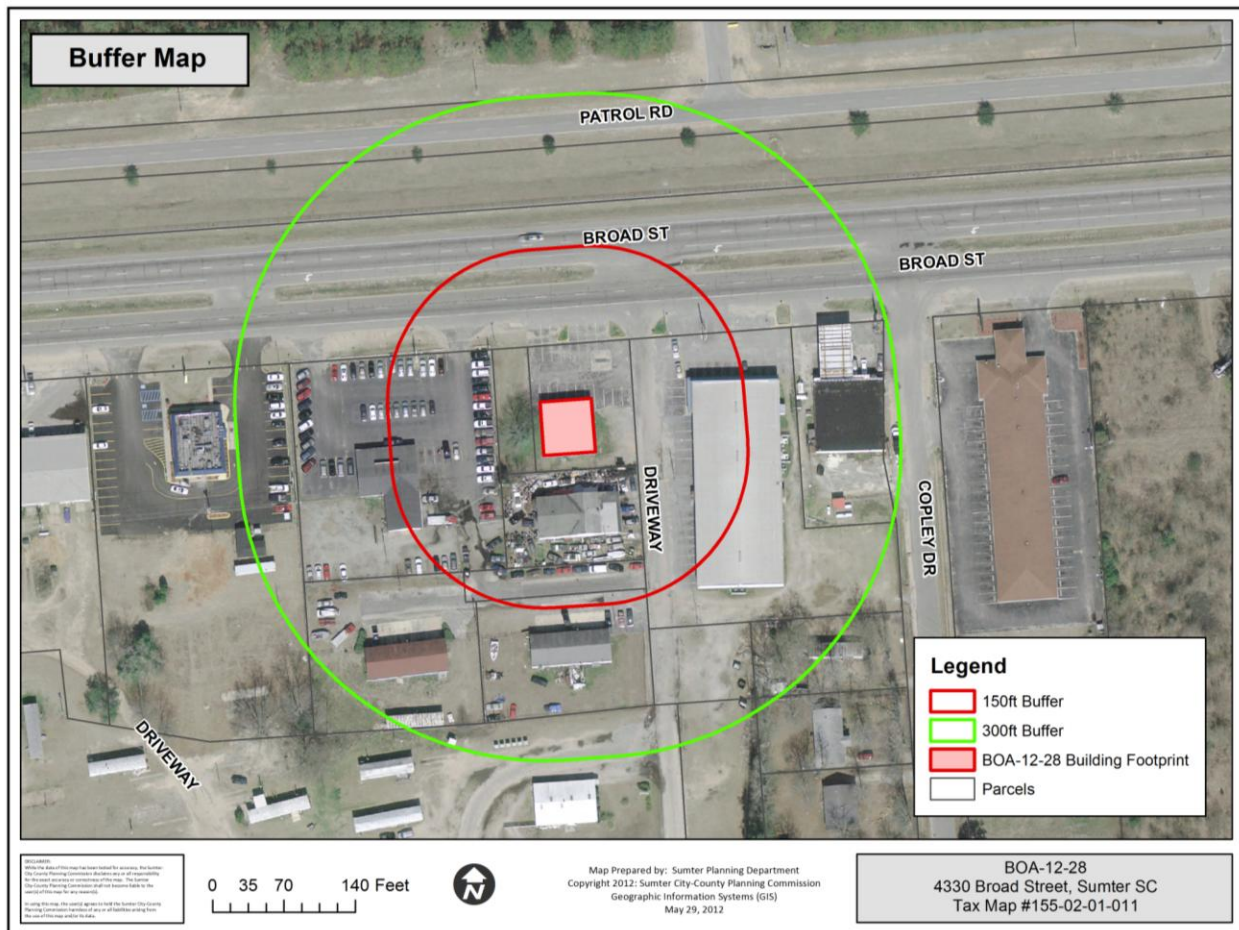
Article 5 Section 5.b.3.k Electronic Gaming Establishments:

1. *The use shall not be located within 300 ft., measured from structure to structure, from any church or school; and shall not be located within 150 ft. from a park, liquor store or bar; and shall not be located within 150 ft. from any other Electronic Gaming/sweepstakes establishment.*
2. *Hours of operation shall be limited in the following manner:*
 - a. *Monday to Friday – 9:00 a.m. to 2:00 a.m.*
 - b. *Saturday – 9:00 a.m. to 12:00 a.m.*
 - c. *Sunday – Prohibited*
3. *Parking required: 1 space per 2 sweepstakes terminals and 1 employee space*
4. *The minimum number of terminals per establishment: 20
The maximum number of terminals per establishment: 75*
5. *No one under 18 years of age permitted*
6. *No alcohol shall be consumed, served or available for purchase on premises*

7. A primary use is a sweepstakes establishment with 20 or more machines. A primary use must meet all of the requirements of this section. Machines shall not be permitted as an accessory use.

The following can be determined based on 5.b.3.k:

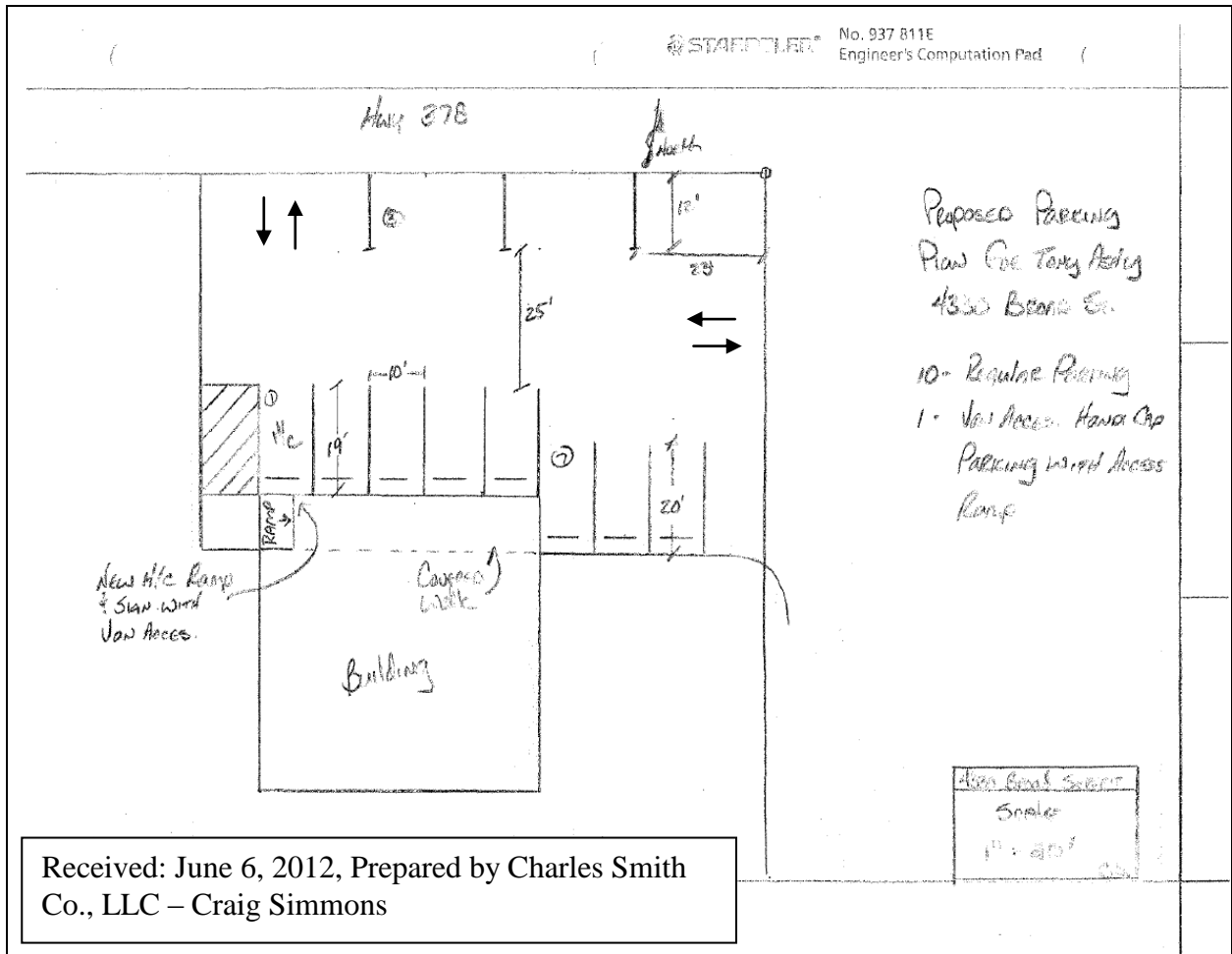
- As shown in the buffer map below, staff concludes the proposed location meets the Ordinance separation requirement of 300 ft. from structure to structure of a church or school and the 150 ft. separation requirement from a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed or approved Electronic Gaming/Sweepstakes establishment.



- As shown in the 2007 Orthophotography image of the site below, the site appears to have 28 parking spaces however, the parking spaces on site that are currently delineated do not meet minimum dimensions for a parking space nor does the travel aisle between spaces meet minimum widths for safe maneuvering of vehicles in and out of the designated parking spaces. Additionally, the spaces highlighted in red below, are located within the SC DOT right of way and cannot be counted to meet the minimum space requirements.



- Based upon the noted deficiencies above, the Applicant has submitted a new parking lot layout/stripping plan that shows 7 regular 9'x19' 90 degree parking spaces, 1 handicap van accessible space, and 3 parallel parking spaces in order to provide the minimum number of required spaces for an Electronic Gaming Establishment with 20 terminals. The striping plan shown on the following page meets Ordinance standards and once implemented will provide the appropriate number of spaces for the proposed establishment.



Article 1, Section 1.h.4.c Special Exceptions:

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*
2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*
 - a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements;*
 - b. *That the special exception will be in substantial harmony with the area in which it is located;*
 - c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

The following can be determined based on 1.h.4.c.2:

1. Overall, the site does not comply with the parking lot, bufferyards and landscaping requirements contained in the County Zoning Ordinance. Specifically, as designed today the parking spaces on site that are currently delineated do not meet minimum dimensions for a parking space nor does the travel aisle between spaces meet minimum widths for safe maneuvering of vehicles in and out of the designated parking spaces—the applicant has submitted a new striping plan that remedies these issues.

Notwithstanding the previous, the property was developed under the pre-1999 County standards with different regulations for parking lots and bufferyards. The site has been vacant for more than 36 months and is subject to discontinuance as defined in Article 6. As a result, parking lot construction, the landscaping and bufferyards are no longer considered to be legal non-conforming features. Site upgrades beyond restriping the parking lot will be tied to cost of investment in the structure—it is not anticipated that investment in the structure will exceed the 25% of the assessed value of the structure, however; should investment in the structure exceed the 25% threshold, additional site upgrades in compliance with Article 6 shall be necessary.

2. Staff finds that the proposed Special Exception request is in substantial harmony with the surrounding area based on the following conclusions:
 - a. The proposed special exception is not within 300 ft. of a church or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed or approved Electronic Gaming/Sweepstakes establishment.
 - b. It has been shown that the proposed location meets all the separation criteria outlined in the Ordinance as well as the additional development standards stipulated for the proposed number of sweepstakes terminals.
3. Staff finds that the proposed Special Exception request will not discourage or negate the use of surrounding property for use(s) permitted by right based on the following conclusions:
 - a. The stated purpose of the district is to “accommodate the broadest possible range of commercial uses.” This portion of the Broad St. Corridor is dominated by older commercial development along the Broad St. frontage with residential/mobile home development to the rear of the commercial strip. It is presumed the established uses in the vicinity are, or can be, compatible with the proposed use through appropriate site development standards. It is also inferred from the Special Exception criteria found in 5.b.3.k, that Electronic Gaming Establishments have not been considered to be incompatible with residential uses or other uses such as bingo parlors as noted by the absence of a specific separation requirement as part of the Special Exception review criteria.

III. STAFF RECOMMENDATION

Staff recommends approval of BOA-12-28. With implementation of the proposed striping plan for the parking lot, the proposed site meets applicable standards.

IV. DRAFT MOTIONS for BOA-12-28

- A. I move that the Sumter Board of Appeals approve BOA-12-28, subject to the findings of fact and conclusions contained in draft order, dated June 20, 2012 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-28.

V. ZONING BOARD OF APPEALS – JUNE 13, 2012

Due to the lack of a quorum, a vote was not taken at the June 13, 2012, Zoning Board of Appeals meeting. The vote will take place at a special meeting on June 20, 2012

VI. ZONING BOARD OF APPEALS – JUNE 20, 2012 – SPECIAL MEETING

The Sumter City-County Board of Appeals at its meeting on Wednesday, June 20, 2012, voted to approve this request.

Exhibit 1

Order on Special Exception and Application

Sumter Board of Appeals

BOA-12-28, 4330 Broad St., Sumter, SC
June 13, 2012
June 20, 2012 – Special Meeting

Date Filed: June 20, 2012

Permit Case No. BOA-12-28

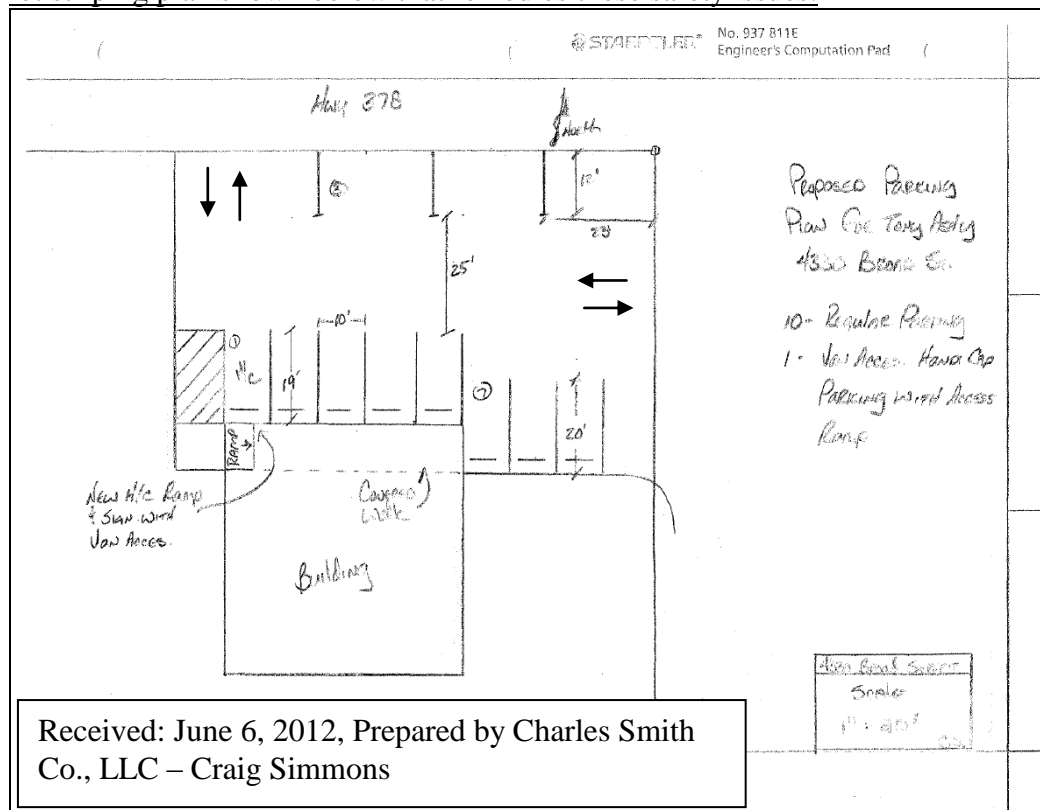
The Board of Zoning Appeals held a public hearing on Wednesday, June 13, 2012 to consider the request of Tony Ashy, the Applicant for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.i.4.j, and 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: an Internet Café with Sweepstakes (SIC Code 7999). Due to the lack of a quorum, a vote was not taken at the June 13, 2012, meeting. The voting will take place at a special meeting on June 20, 2012.

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

1. The Board concludes that the standards in Sections 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance ☒ **have** - ☐ **have not** been met based on the following findings of fact:
 - a. As shown in the buffer map below, the proposed special exception is not within 300 ft. of a church or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.



- b. The location meets all the specific separation criteria outlined in the Ordinance as well as the following: Hours of operation shall be limited to Monday-Friday – 9:00 a.m. to 2:00 a.m.; Saturday – 9:00 a.m. to 12:00 a.m.; Sunday – No operation. Number of terminals: 20; Number of on-site parking spaces: 11; No one under 18 years of age will be admitted; No alcohol will be consumed, served or available for purchase on premises.
2. The Board concludes that the special exception ☒ **does** - ☐ **does not** comply with all applicable development standards contained elsewhere in the Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
- a. Although the site has been subject to a 36 month discontinuance as defined in Article 6, the anticipated investment in the structure to commence operations is projected to be less than 25% of the assessed value of the structure. Therefore, the site is not required to conform to all applicable development standards of the current Sumter County – Zoning & Development Standards Ordinance related to buffering and landscaping. Notwithstanding the above, should investment in the structure exceed the 25% threshold, additional site upgrades in compliance with Article 6 shall be necessary. As designed today, the parking spaces on site that are currently delineated do not meet minimum dimensions for a parking space nor does the travel aisle between spaces meet minimum widths for safe maneuvering of vehicles in and out of the designated parking spaces—the applicant shall implement the submitted parking lot striping plan shown below that remedies these safety issues.



3. The Board concludes that the proposed special exception ☒ **will** - ☐ **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:
- a. The proposed special exception is not within 300 ft. of a church or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.
 - b. It has been shown that the proposed location meets all the specific separation criteria outlined in the Ordinance as well as the additional development standards stipulated for the proposed number of sweepstakes terminals.
4. The Board concludes the special exception ☐ **will** - ☒ **will not** discourage or negate the use of surrounding property for uses(s) permitted by right based on the following findings of fact:
- a. The stated purpose of the district is to “accommodate the broadest possible range of commercial uses.” This portion of the Broad St. Corridor is dominated by older commercial development along the Broad St. frontage with residential/mobile home development to the rear of the commercial strip. It is presumed the established uses in the vicinity are, or can be, compatible with the proposed use through appropriate site development standards. It is also inferred from the Special Exception criteria found in 5.b.3.k, that Electronic Gaming Establishments have not been considered to be incompatible with residential uses or other uses such as bingo parlors as noted by the absence of a specific separation requirement as part of the Special Exception review criteria.

THE BOARD, THEREFORE, ORDERS that the special exception is ☐ **DENIED** –
☒ **GRANTED**

- Number of sweepstakes terminals is limited to 20 terminals based on the 11 available parking spaces for the use.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.
